

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 420

Introduced by Senator Huff
(Coauthors: Senators Block, Runner, and Vidak)
(Coauthor: Assembly Member Olsen)

February 25, 2015

An act to amend Section 647 of the Penal Code, relating to prostitution.

LEGISLATIVE COUNSEL'S DIGEST

SB 420, as amended, Huff. Prostitution.

Existing law provides that a person who solicits or agrees to engage in or engages in any act of prostitution is guilty of disorderly conduct, a misdemeanor.

This bill would recast these provisions and eliminate engaging in an act of prostitution from the definition of the offense. ~~The bill would rename "prostitution" as "commercial sexual contact" for purposes of these provisions.~~ The bill would provide that the offense is committed when (1) an individual solicits another to engage in an act of ~~commercial sexual contact~~ *prostitution* with the intent to receive compensation, money, or anything of value, and with the specific intent to so engage; (2) an individual solicits another who is 18 years of age or older to engage in an act of ~~commercial sexual contact~~ *prostitution* in exchange for the individual providing compensation, money, or anything of value to the other, or, who manifests an acceptance of an offer or solicitation by another who is 18 years of age or older to so engage, regardless of whether the offer or solicitation by the other was made by a person who also possessed the specific intent to engage in an act of ~~commercial sexual contact~~; *prostitution*; or (3) an individual solicits another who

is a minor to engage in an act of ~~commercial sexual contact~~ *prostitution* in exchange for the individual providing compensation, money, or anything of value to the minor, or who manifests an acceptance of an offer or solicitation by someone who is a minor to so engage, regardless of whether the offer or solicitation by the minor was made by a person who also possessed the specific intent to engage in an act of ~~commercial sexual contact~~. *prostitution*.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 647 of the Penal Code is amended to
2 read:
3 647. Except as provided in subdivision (I), every person who
4 commits any of the following acts is guilty of disorderly conduct,
5 a misdemeanor:
6 (a) An individual who solicits anyone to engage in or who
7 engages in lewd or dissolute conduct in any public place or in any
8 place open to the public or exposed to public view.
9 (b) (1) An individual who solicits another to engage in an act
10 of ~~commercial sexual contact~~ *prostitution* with the intent to receive
11 compensation, money, or anything of value, and with the specific
12 intent to so engage.
13 (2) An individual who solicits another who is 18 years of age
14 or older, to engage in an act of ~~commercial sexual contact~~
15 *prostitution* in exchange for the individual providing compensation,
16 money, or anything of value to the other, or, who manifests an
17 acceptance of an offer or solicitation by another who is 18 years
18 of age or older to so engage, regardless of whether the offer or
19 solicitation by the other was made by a person who also possessed
20 the specific intent to engage in an act of ~~commercial sexual contact~~.
21 *prostitution*.
22 (3) An individual who solicits another who is a minor to engage
23 in an act of ~~commercial sexual contact~~ *prostitution* in exchange
24 for the individual providing compensation, money, or anything of
25 value to the minor, or who manifests an acceptance of an offer or
26 solicitation by someone who is a minor to so engage, regardless
27 of whether the offer or solicitation by the minor was made by a

1 person who also possessed the specific intent to engage in an act
2 of ~~commercial sexual contact~~ *prostitution*.

3 (4) No manifestation of acceptance of an offer or solicitation
4 to engage in an act of ~~commercial sexual contact~~ *prostitution* shall
5 constitute a violation of this subdivision unless some act, in
6 addition to the manifestation of acceptance, is done within this
7 state in furtherance of the commission of the act of ~~commercial~~
8 ~~sexual contact~~ *prostitution* by the person manifesting an acceptance
9 of an offer or solicitation to engage in that act. As used in this
10 subdivision, "~~commercial sexual contact~~" "*prostitution*" includes
11 any lewd act between persons for money or other consideration.

12 (c) Who accosts other persons in any public place or in any
13 place open to the public for the purpose of begging or soliciting
14 alms.

15 (d) Who loiters in or about any toilet open to the public for the
16 purpose of engaging in or soliciting any lewd or lascivious or any
17 unlawful act.

18 (e) Who lodges in any building, structure, vehicle, or place,
19 whether public or private, without the permission of the owner or
20 person entitled to the possession or in control of it.

21 (f) Who is found in any public place under the influence of
22 intoxicating liquor, any drug, controlled substance, toluene, or any
23 combination of any intoxicating liquor, drug, controlled substance,
24 or toluene, in a condition that he or she is unable to exercise care
25 for his or her own safety or the safety of others, or by reason of
26 his or her being under the influence of intoxicating liquor, any
27 drug, controlled substance, toluene, or any combination of any
28 intoxicating liquor, drug, or toluene, interferes with or obstructs
29 or prevents the free use of any street, sidewalk, or other public
30 way.

31 (g) When a person has violated subdivision (f), a peace officer,
32 if he or she is reasonably able to do so, shall place the person, or
33 cause him or her to be placed, in civil protective custody. The
34 person shall be taken to a facility, designated pursuant to Section
35 5170 of the Welfare and Institutions Code, for the 72-hour
36 treatment and evaluation of inebriates. A peace officer may place
37 a person in civil protective custody with that kind and degree of
38 force which would be lawful were he or she effecting an arrest for
39 a misdemeanor without a warrant. A person who has been placed
40 in civil protective custody shall not thereafter be subject to any

1 criminal prosecution or juvenile court proceeding based on the
2 facts giving rise to this placement. This subdivision shall not apply
3 to the following persons:

4 (1) Any person who is under the influence of any drug, or under
5 the combined influence of intoxicating liquor and any drug.

6 (2) Any person who a peace officer has probable cause to believe
7 has committed any felony, or who has committed any misdemeanor
8 in addition to subdivision (f).

9 (3) Any person who a peace officer in good faith believes will
10 attempt escape or will be unreasonably difficult for medical
11 personnel to control.

12 (h) Who loiters, prowls, or wanders upon the private property
13 of another, at any time, without visible or lawful business with the
14 owner or occupant. As used in this subdivision, “loiter” means to
15 delay or linger without a lawful purpose for being on the property
16 and for the purpose of committing a crime as opportunity may be
17 discovered.

18 (i) Who, while loitering, prowling, or wandering upon the private
19 property of another, at any time, peeks in the door or window of
20 any inhabited building or structure, without visible or lawful
21 business with the owner or occupant.

22 (j) (1) Any person who looks through a hole or opening, into,
23 or otherwise views, by means of any instrumentality, including,
24 but not limited to, a periscope, telescope, binoculars, camera,
25 motion picture camera, camcorder, or mobile phone, the interior
26 of a bedroom, bathroom, changing room, fitting room, dressing
27 room, or tanning booth, or the interior of any other area in which
28 the occupant has a reasonable expectation of privacy, with the
29 intent to invade the privacy of a person or persons inside. This
30 subdivision shall not apply to those areas of a private business
31 used to count currency or other negotiable instruments.

32 (2) Any person who uses a concealed camcorder, motion picture
33 camera, or photographic camera of any type, to secretly videotape,
34 film, photograph, or record by electronic means, another,
35 identifiable person under or through the clothing being worn by
36 that other person, for the purpose of viewing the body of, or the
37 undergarments worn by, that other person, without the consent or
38 knowledge of that other person, with the intent to arouse, appeal
39 to, or gratify the lust, passions, or sexual desires of that person and

1 invade the privacy of that other person, under circumstances in
2 which the other person has a reasonable expectation of privacy.

3 (3) (A) Any person who uses a concealed camcorder, motion
4 picture camera, or photographic camera of any type, to secretly
5 videotape, film, photograph, or record by electronic means, another,
6 identifiable person who may be in a state of full or partial undress,
7 for the purpose of viewing the body of, or the undergarments worn
8 by, that other person, without the consent or knowledge of that
9 other person, in the interior of a bedroom, bathroom, changing
10 room, fitting room, dressing room, or tanning booth, or the interior
11 of any other area in which that other person has a reasonable
12 expectation of privacy, with the intent to invade the privacy of that
13 other person.

14 (B) Neither of the following is a defense to the crime specified
15 in this paragraph:

16 (i) The defendant was a cohabitant, landlord, tenant, cotenant,
17 employer, employee, or business partner or associate of the victim,
18 or an agent of any of these.

19 (ii) The victim was not in a state of full or partial undress.

20 (4) (A) Any person who intentionally distributes the image of
21 the intimate body part or parts of another identifiable person, or
22 an image of the person depicted engaged in an act of sexual
23 intercourse, sodomy, oral copulation, sexual penetration, or an
24 image of masturbation by the person depicted or in which the
25 person depicted participates, under circumstances in which the
26 persons agree or understand that the image shall remain private,
27 the person distributing the image knows or should know that
28 distribution of the image will cause serious emotional distress, and
29 the person depicted suffers that distress.

30 (B) A person intentionally distributes an image described in
31 subparagraph (A) when he or she personally distributes the image,
32 or arranges, specifically requests, or intentionally causes another
33 person to distribute that image.

34 (C) As used in this paragraph, “intimate body part” means any
35 portion of the genitals, the anus and in the case of a female, also
36 includes any portion of the breasts below the top of the areola, that
37 is either uncovered or clearly visible through clothing.

38 (D) It shall not be a violation of this paragraph to distribute an
39 image described in subparagraph (A) if any of the following
40 applies:

1 (i) The distribution is made in the course of reporting an
2 unlawful activity.

3 (ii) The distribution is made in compliance with a subpoena or
4 other court order for use in a legal proceeding.

5 (iii) The distribution is made in the course of a lawful public
6 proceeding.

7 (5) This subdivision shall not preclude punishment under any
8 section of law providing for greater punishment.

9 (k) In any accusatory pleading charging a violation of
10 subdivision (b), if the defendant has been once previously convicted
11 of a violation of that subdivision, the previous conviction shall be
12 charged in the accusatory pleading. If the previous conviction is
13 found to be true by the jury, upon a jury trial, or by the court, upon
14 a court trial, or is admitted by the defendant, the defendant shall
15 be imprisoned in a county jail for a period of not less than 45 days
16 and shall not be eligible for release upon completion of sentence,
17 on probation, on parole, on work furlough or work release, or on
18 any other basis until he or she has served a period of not less than
19 45 days in a county jail. In all cases in which probation is granted,
20 the court shall require as a condition thereof that the person be
21 confined in a county jail for at least 45 days. In no event does the
22 court have the power to absolve a person who violates this
23 subdivision from the obligation of spending at least 45 days in
24 confinement in a county jail.

25 In any accusatory pleading charging a violation of subdivision
26 (b), if the defendant has been previously convicted two or more
27 times of a violation of that subdivision, each of these previous
28 convictions shall be charged in the accusatory pleading. If two or
29 more of these previous convictions are found to be true by the jury,
30 upon a jury trial, or by the court, upon a court trial, or are admitted
31 by the defendant, the defendant shall be imprisoned in a county
32 jail for a period of not less than 90 days and shall not be eligible
33 for release upon completion of sentence, on probation, on parole,
34 on work furlough or work release, or on any other basis until he
35 or she has served a period of not less than 90 days in a county jail.
36 In all cases in which probation is granted, the court shall require
37 as a condition thereof that the person be confined in a county jail
38 for at least 90 days. In no event does the court have the power to
39 absolve a person who violates this subdivision from the obligation
40 of spending at least 90 days in confinement in a county jail.

1 In addition to any punishment prescribed by this section, a court
2 may suspend, for not more than 30 days, the privilege of the person
3 to operate a motor vehicle pursuant to Section 13201.5 of the
4 Vehicle Code for any violation of subdivision (b) that was
5 committed within 1,000 feet of a private residence and with the
6 use of a vehicle. In lieu of the suspension, the court may order a
7 person's privilege to operate a motor vehicle restricted, for not
8 more than six months, to necessary travel to and from the person's
9 place of employment or education. If driving a motor vehicle is
10 necessary to perform the duties of the person's employment, the
11 court may also allow the person to drive in that person's scope of
12 employment.

13 (l) (1) A second or subsequent violation of subdivision (j) is
14 punishable by imprisonment in a county jail not exceeding one
15 year, or by a fine not exceeding two thousand dollars (\$2,000), or
16 by both that fine and imprisonment.

17 (2) If the victim of a violation of subdivision (j) was a minor at
18 the time of the offense, the violation is punishable by imprisonment
19 in a county jail not exceeding one year, or by a fine not exceeding
20 two thousand dollars (\$2,000), or by both that fine and
21 imprisonment.

22 (m) (1) If a crime is committed in violation of subdivision (b)
23 and the person who was solicited was a minor at the time of the
24 offense, and if the defendant knew or should have known that the
25 person who was solicited was a minor at the time of the offense,
26 the violation is punishable by imprisonment in a county jail for
27 not less than two days and not more than one year, or by a fine not
28 exceeding ten thousand dollars (\$10,000), or by both that fine and
29 imprisonment.

30 (2) The court may, in unusual cases, when the interests of justice
31 are best served, reduce or eliminate the mandatory two days of
32 imprisonment in a county jail required by this subdivision. If the
33 court reduces or eliminates the mandatory two days' imprisonment,
34 the court shall specify the reason on the record.